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DEC 05 2006

TECHNOLOGY CENTER 3600

In re Application of:

Joseph Bieganek, et al.

Appl. No. 10/628,860

Filed: July 28, 2003

For: CONTOURED SEAT CUSHION
AND METHOD FOR OFFLOADING
PRESSURE FROM SKELETAL BONE
PROMINENCES AND ENCOURAGING
PROPER POSTURAL ALIGNMENT

: PETITION TO INVOKE
: SUPERVISORY AUTHORITY
: UNDER 37 CFR 1.181

This is a decision on Applicants' Petition under 37 CFR 1.181 filed on June 23, 2006 to invoke supervisory authority.

The Petition is **DISMISSED**.

Petitioners have requested clarification of the April 25, 2006 Office action. Specifically Petitioners have requested (1) factual support for the Examiner's position that "the applied prior art can present the same effect depending upon how it is utilized"; (2) the legal authority upon which the Examiner relies for the position that functional language can be disregarded when determining the claim scope and patentability; (3) clarification of the rejections under 35 USC 112, 2nd paragraph and that a reasonable number of claims be selected as representing the alleged problems under 35 USC 112, 2nd paragraph; (4) the time for response be restarted; and (5) other reasonable relief be given that will promote the reasonable and straightforward future examination of this application.

Regarding Petitioners' requests for factual support for the Examiner's position that "the applied prior art can present the same effect depending upon how it is utilized" and the legal authority upon which the Examiner relies for the position that functional language can be disregarded when determining the claim scope and patentability, these requests are related to appealable matters and are not petitionable. However, MPEP 2114 states "a claim containing a 'recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus' if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. &

Inter. 1987)." In the Office action of April 25, 2006, the Examiner clearly explained that the prior art meets the claim limitations. The Examiner also stated that since the prior art includes all of the structural limitations, it is capable of meeting the functional language limitations. Therefore these requests are dismissed.

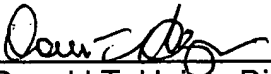
Regarding Petitioners' requests for clarification of the rejections under 35 USC 112, 2nd paragraph and that a reasonable number of claims be selected as representing the alleged problems under 35 USC 112, 2nd paragraph, these requests are also related to an appealable matters and are not petitionable. A review of the Office action of April 24, 2006 indicates that the Examiner clearly explained all of the problems under 35 USC 112, 2nd paragraph. An appeal is the appropriate venue for differences of opinion relating to patentability issues. Therefore this request is dismissed.

Regarding Petitioners' request for restarting the time period for response, since the issues raised in elements (1)-(3) have been dismissed and there are no changes to the Office action resulting from the petition, the request for restating the response period is also dismissed.

Regarding Petitioners' request for other reasonable relief be given that will promote the reasonable and straightforward future examination of this application, a review of the file history does not present any evidence of any arbitrary or capricious actions on the part of the examiner assigned to examine the application. Since Petitioners have not made specific requests for the relief desired, this request is also dismissed.

SUMMARY: The Petition is DISMISSED.

Any questions regarding this decision should be directed to Patricia Engle at 571-272-6660.


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571-272-5150

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DTH/ple : 11/20/06